CHAPTER 8
Real Property Rights
Real Estate
- Surface of the earth and all improvements (artificial things attached to the land)
- Subsurface
- Air above the surface
- Mineral deposits, wildlife, timber, fish, water and soil

Real Property
- Real estate plus the legal bundle of rights
Surface Rights

Water

- Riparian Rights – Land abutting a flowing waterway - river or stream
- Littoral Rights – Land abutting non-flowing water – ocean, sea or lake

Natural process – land/water

- Erosion – loss of land due to natural forces
- Accretion – Increase of land due to natural causes
- Alluvion – Deposits of land as result of accretion
- Reliction – dry land after water recedes
Personal Property (Chattel)

- **Movable** – not attached to land or buildings
- **Fixture** – was personal property - now attached to land or building
- Tenant affixes personal property, becomes fixture – cannot remove at lease termination
Trade Fixture

• Personal property that has been attached to real estate being used in the conduct of business
• Not considered part of the real estate
• Can be removed at lease termination
• Real property (Fixture) is included in the sale
• Personal property is not included with a sale
  • Unless listed in the contract.
• Disagreement as to whether an item is a fixture
  • Courts would have to determine,
  • When in doubt – Write It Out
Four Court Tests:

- **Intent** - item was meant to become part of the real property
- **Relationship** - e.g. landlord/tenant or seller/buyer
- **Method of Annexation** - how item was installed
- **Adaptation** - item designed for or necessary to nature of the property
Bundle of Rights

- Possession
- Disposition
- Enjoyment (use)
- Exclusion
- Control

Legal Rights in Property
Estate and Tenancies

• Estate – extent of rights (quality & quantity)
• Estate = Tenancy (anyone who has rights in real property)

• 2 Classifications of estates:
  • Freehold
  • Non-freehold
Freehold Estates

- Ownership for Indefinite duration
  - Fee Simple – most comprehensive estate
  - Life estate
Fee Simple

- Most comprehensive estate
  - Absolute and complete
  - Buyer receives unless contract specifies something less
- Five types of Freehold Estates
  1. Estate in Severalty
  2. Tenancy in Common
  3. Joint Tenancy
  4. Tenancy by the Entireties
  5. Life Estate
Estate in Severalty
Ownership by 1 owner
Unities of Title

All joint tenants interests include:
• **Unity of Possession** –
  • undivided shares of the property with no one joint-tenant having the right to possess the entire property
• **Unity of Interest** –
  • identical in duration, extent and nature
• **Unity of Time** –
  • interest must vest at the same time and for the same period
• **Unity of Title** –
  • equal title to the property, created by the same instrument
Tenancy in Common

- Unities of title may be equal or unequal
- Includes Inheritability instead of survivorship
- Second most common type of ownership after legally married spouses
Unities of Title

• Possession
• Interest
• Time
• Title
• Right of Survivorship

Joint Tenancy
Joint Tenancy

- Joint Tenancy
- Unities of title must be equal and the same
- Must state it has the right of Survivorship
- Cannot leave interest in a will
• Ownership by legally married spouses
  • The marriage owns the property
  • Neither spouse owns any individually
• Includes the right of survivorship
• Divorce
  • Ownership converts to a tenancy in common
Separate property

- Married – can own property separately
- Owned by one spouse before marriage
- Acquired by gift or inheritance during marriage
- Spouse can convey without consent of other

Tenancy by the Entireties
<table>
<thead>
<tr>
<th>Unities in Common</th>
<th>Tenancy in Common</th>
<th>Joint Tenancy</th>
<th>Tenancy by the Entireties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Same or different</td>
<td>Same</td>
<td>Same</td>
<td>Same</td>
</tr>
<tr>
<td>Two or more</td>
<td>Two or more</td>
<td>Husband and Wife</td>
<td>Yes</td>
</tr>
<tr>
<td>No</td>
<td>Must State</td>
<td>Most common</td>
<td></td>
</tr>
<tr>
<td>Second most common</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Life Estate

- Ownership tied to duration of someone's life
- Owner must maintain the property and not permit Waste
- While the life estate exists
  - **Reversion estate** - ownership will return to the original grantor
  - **Remainder estate** - ownership will pass to a third party
Non-freehold or Leasehold Estates

• Not ownership – right of possession and use
• Three types
  • Tenancy at Will
  • Tenancy for Years
  • Tenancy at Sufferance
Tenancy at Will - tenant has possession with the owner’s permission
  • Without specific term
  • May be terminated with proper notice
    • e.g. 15 days for a month to month

Tenancy for Years
  • Definite termination date
  • Created with a written lease
  • Owner has estate in reversion

Tenancy at Sufferance - tenant in possession without the owner’s permission
  • Holdover tenant
  • May be terminated without notice

Non-freehold Estates
Elective Share

**Purpose** - protects surviving spouse from an unfair will
- Surviving spouse entitled to 30% of real and personal property
- Not automatic
- Must be elected – can override will
- Personal right – cannot be sold

Does not apply to property held by:
- Tenancy by the entireties
- Homestead property
• To be enforceable
  • Must be in writing
    • If term is longer than 1 Year
• A lease survives a sale of the property so any deposits or advance rents would be given to the buyer at closing
• Preparing leases for someone else is practicing law
  • Licensees are exempt only if using the forms approved by the Florida Supreme court
Descent and Distribution

Probate laws:
- Allows property to pass to legal heirs
- Owner dies intestate (without a will)
- No lineal descendants or lineal descendants of both spouses
  - Spouse receives fee simple
- With lineal descendants not from both spouses
  - Spouse receives 1/2
  - Lineal descendants divide balance of property

Owner dies testate (with a will)
- Laws of descent and distribution do not apply
- Personal representative named in will
  - Verifies that property was distributed according to will
Constitutional Homestead Rights

- Size
  - Outside municipality - 160 acres
  - Inside municipality – Half acre
- Tax Exemption
  - Up to $50,000 maximum deducted from assessed value before calculating property tax
  - Other exemptions – Chapter 18
Homestead property is not protected from forced sale for direct liens such as:

- Real property taxes
- Special assessments
- Mortgages
- Vendor’s liens
- Construction liens
Condominiums, Cooperatives and Time Shares

DBPR Regulates via:
- The Division of Florida Condominiums, Timeshare, and Mobile Homes
- Real estate license require to sell or lease
- Owners purchase an individual unit (cube in the sky) in a multi-unit building
- Owners have title to airspace within the walls of the unit
- Includes a Tenancy in Common ownership for common areas
• Main documents
  • Declaration (master deed)
    • Creates the condominium and provides for individual ownership of units)
  • Articles of Incorporation
    • Establishes the condo association as a legal entity
  • By-Laws
    • Describes administration and management of the property
Condominiums

- Main documents
  - Rules of the Association
    - Assessment shares, etc.
  - Question and Answer Sheet
- Provides buyers with answers to common questions
Condominiums

- Rescission Period
  - 15 days receipt from developer
  - 3 business days for resale
Cooperative Association

- Title is held by a Corporation
- Owners receive shares of stock instead of real estate
- Owners receive a proprietary lease
- Enjoy same benefits as if they owned unit
  - Real estate tax deductions
  - Equity buildup as master mortgage is paid down
  - Appreciation in property – stock value goes up
- Rescission Period
  - 15 days for New
  - 3 business days for resale
• Condominium divided into time segments (usually weeks)

• The 2 forms of time-sharing are
  • Interval Ownership - fee simple ownership (best)
  • Right-To-Use - temporary in nature

• Rescission Period
  • 10 days for new
  • 10 days for resale